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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 JOHN GRIFFIN HEADRICK,
11
12 Petitioner,

13 v.

14 RICK SCOTT,
Respondent.

CASE NO. 3:19-CV-05725-BHS-JRC
ORDER

15 The District Court has referred this action to United States Magistrate Judge J. Richard
16 Creatura. On August 5, 2019, petitioner John Griffin Headrick, a pre-trial detainee housed at
17 Grays Harbor County Jail, filed a federal habeas petition pursuant to 28 U.S.C. § 2241 (the
18 “petition”). Dkts. 1, 6.

19 The Court has reviewed the petition and it appears that a petition under § 2241 is not the
20 appropriate way to remove petitioner’s pending state court proceedings to federal court, the
21 petition is unexhausted, and it is inappropriate for the Court to intervene in this case. Therefore,
22 the Court directs petitioner to file an amended pleading by October 9, 2019. The Court also
23 denies petitioner’s motion to appoint counsel. Dkt. 7.
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1 **I. Background**

2 Petitioner previously filed a case this Court styled as a “petition of removal” from state
3 court. *See State of Washington v. Headrick*, 19-cv-5015-BHS; Dkt. 6 at 5. In that case, the Court
4 denied petitioner’s motion to proceed *in forma pauperis* and directed the Clerk to remand the
5 matter to Grays Harbor Superior Court for the State of Washington. *State of Washington v.*
6 *Headrick*, Dkt. 5. The Court takes judicial notice of *State of Washington v. Headrick*.

7 Petitioner now requests removal of his pending criminal charges from state to federal
8 court in the form of a § 2241 petition. Dkt. 6. Petitioner states that his previous “petition for
9 removal” was the wrong procedure. *Id.* at 5 (citing *State of Washington v. Headrick*, 19-cv-5015-
10 BHS). He reasserts his claim that the state court lacks jurisdiction over his pending criminal
11 proceeding. Dkt. 6.

12 In support of his petition, petitioner argues that he is being held in custody unlawfully
13 because the trial court lacks jurisdiction and is not the proper venue. Dkt. 6. Petitioner contends
14 that he is a “mixed-blood Cherokee Indian,” the alleged offense occurred in “Indian Country,”
15 and that the proper venue is the Chehalis Indian Reservation and/or federal court. Dkt. 6 at 4.
16 Petitioner requests that the Court dismiss his state court case for lack of jurisdiction or remand to
17 the Confederated Tribes of the Chehalis Indian Reservation or federal court. Dkt. 6 at 24.

18 **II. Discussion**

19 At the outset of a case, a district court must determine whether it has jurisdiction over a
20 petition filed by a prisoner under § 2241. *Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006);
21 *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000). Further, the Court must undertake a
22 preliminary review of the petition to determine whether “it plainly appears from the face of the
23 petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”
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1 Rule 4, Rules Governing Section 2254 Cases; *see also* 28 U.S.C. § 2243 (Rules Governing
2 Section 2254 cases may also be applied to habeas corpus actions filed under § 2241). If the
3 petitioner is not entitled to relief, the petition must be summarily dismissed. *Id.*; *Obremski v.*
4 *Maass*, 915 F.2d 418 (9th Cir. 1990) (affirming district court's summary dismissal as a matter of
5 law, but relying upon Rule 4 rather than Rule 12(b)(6)).

6 **A. Relief Pursuant to Section 2241**

7 According to the petition, petitioner is awaiting a criminal trial in state court. Dkt. 6. A
8 habeas petition under § 2241 “challenges the execution of a criminal sentence on grounds that a
9 prisoner ‘is in custody in violation of the Constitution or laws or treaties of the United States.’”
10 *Benny v. U.S. Parole Commission*, 295 F.3d 977, 988 (9th Cir. 2002) (quoting 28 U.S.C. §
11 2241(c)(3)). If a petitioner establishes that the remedy under 2255 is inadequate or ineffective, a
12 petitioner may also use a § 2241 petition to test the legality of his detention. *See* 28 U.S.C. §
13 2255(e). However, this exception is very limited and courts have rarely found the remedy under
14 § 2255 to be inadequate or ineffective. *See Moore v. Reno*, 185 F.3d 1054, 1055 (9th Cir. 1999)
15 (citing *United States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997)). For example, the fact that a
16 prior motion under § 2255 was unsuccessful does not render the remedy inadequate or
17 ineffective. *See id.*

18 Here, although petitioner characterizes the instant petition as brought pursuant to § 2241,
19 he does not allege any facts challenging the execution of his sentence. Nor has petitioner shown
20 that any remedy under § 2255 was inadequate or ineffective. He simply alleges that his criminal
21 proceeding should be heard in federal court and appears to restate his challenge to the state
22 court’s jurisdiction already rejected by this Court. *See* Dkt. 6 at 5; *State of Washington v.*
23 *Headrick*, 19-cv-5015-BHS.

1 However, such a resort to a § 2241 petition is not proper. Petitioner is not permitted to
2 remove his pending state court criminal proceedings to federal court. *See* 28 U.S.C. § 1446(a) (A
3 civil action filed in state courts of which a federal district court has jurisdiction, “may be
4 removed *by the defendant or defendants*, to the district court of the United States for the district
5 and division embracing the place where such action is pending....”) (emphasis added).

6 Petitioner is directed to show cause why this petition is proper under § 2241 or file an
7 amended petition challenging the execution of his sentence.

8 **B. Exhaustion**

9 Second, although there is no exhaustion requirement mandated by 28 U.S.C. §
10 2241(c)(3), the Ninth Circuit Court of Appeals has held exhaustion is necessary as a matter of
11 comity unless special circumstances warrant federal intervention prior to a state criminal trial.
12 *Carden v. Montana*, 626 F.2d 82, 83-84 (9th Cir. 1980); *see Younger v. Harris*, 401 U.S. 37
13 (1971). Petitioner’s claims will be considered exhausted only after “the state courts [have been
14 afforded] a meaningful opportunity to consider allegations of legal error without interference
15 from the federal judiciary.” *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986). “[S]tate prisoners must
16 give the state courts one full opportunity to resolve any constitutional issues by invoking one
17 complete round of the State’s established appellate review.” *O’Sullivan v. Boerckel*, 526 U.S.
18 838, 845 (1999).

19 Petitioner fails to show that he exhausted state court remedies by presenting federal
20 constitutional or statutory claims to the Washington state trial and appellate courts in the ongoing
21 criminal proceedings against him. Petitioner has also not shown special circumstances warrant
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1 federal intervention in this case. Therefore, petitioner must show cause why this case should not
2 be dismissed for failure to exhaust state remedies.

3 **C. Younger Abstention**

4 Third, petitioner's case may also be inappropriate in federal court under the *Younger*
5 abstention doctrine. Under *Younger*, abstention from interference with pending state judicial
6 proceedings is appropriate when: "(1) there is 'an ongoing state judicial proceeding'; (2) the
7 proceeding 'implicate[s] important state interests'; (3) there is 'an adequate opportunity in the
8 state proceedings to raise constitutional challenges'; and (4) the requested relief 'seek[s] to
9 enjoin' or has 'the practical effect of enjoining' the ongoing state judicial proceeding." *Arevalo*
10 *v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (quoting *ReadyLink Healthcare, Inc. v. State*
11 *Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)). Federal courts, however, do not invoke the
12 *Younger* abstention if there is a "showing of bad faith, harassment, or some other extraordinary
13 circumstance that would make abstention inappropriate." *Middlesex County Ethics Comm'n v.*
14 *Garden State Bar Ass'n*, 457 U.S. 423, 435 (1982).

15 Here, petitioner's claims appear to implicate *Younger*. First, petitioner is a pre-trial
16 detainee with ongoing state proceedings. Second, as these proceedings involve a criminal
17 prosecution, they implicate important state interests. *See Kelly v. Robinson*, 479 U.S. 36, 49,
18 (1986); *Younger*, 401 U.S. at 43-44. Third, petitioner has failed to allege facts showing that he
19 has been denied an adequate opportunity to address the alleged constitutional violations in the
20 state court proceedings. Last, petitioner raises claims that would effectively enjoin the ongoing
21 state judicial proceeding. As the *Younger* abstention may apply to petitioner's claims, petitioner
22 must show cause why this case should not be dismissed under *Younger*.

1 **III. Motion to Appoint Counsel (Dkt. 7)**

2 There is no constitutional right to counsel in a habeas corpus action. *Coleman v.*
3 *Thompson*, 501 U.S. 722, 755 (1991). A habeas petitioner has a right to counsel, as provided by
4 rule, if an evidentiary hearing is required in his case. *See* Rule 8(c) of the Rules Governing
5 Section 2254 Cases; 28 U.S.C. § 2243 (Rules Governing Section 2254 cases may also be applied
6 to habeas corpus actions filed under § 2241). Whether counsel should be appointed turns on the
7 petitioner's ability to articulate his claims in light of the complexity of the legal issues and his
8 likelihood of success on the merits. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

9 At this time, the Court has not ordered service of the petition and has not determined an
10 evidentiary hearing will be required. *See* Rules Governing Section 2254 Cases in the United
11 States District Courts 6(a) and 8(c); 28 U.S.C. § 2243. Furthermore, petitioner effectively
12 articulated his grounds for relief raised in the petition, and the grounds are not factually or
13 legally complex. Thus, petitioner has not shown the interests of justice require that the Court to
14 appoint counsel at this stage in the case.

15 As petitioner has not shown appointment of counsel is appropriate at this time, the
16 motion to appoint counsel (Dkt. 7) is denied without prejudice.

17 **IV. Instructions to Petitioner and the Clerk**

18 If petitioner intends to pursue this § 2241 habeas action, he must file response to this
19 order and an amended petition on the form provided by the Court. The amended petition must be
20 legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should
21 contain the same case number, and it may not incorporate any part of the original petition by
22 reference. The amended petition will act as a complete substitute for the petition, and not as a
23 supplement.

1 If petitioner fails to adequately address the issues raised herein or file an amended
2 pleading on or before October 9, 2019, the undersigned will recommend dismissal of this action.
3 The Clerk is directed to provide petitioner with the forms for filing a petition for habeas corpus
4 relief pursuant to 28 U.S.C. § 2241.

5 Dated this 10th day of September, 2019.

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8 J. Richard Creatura
9 United States Magistrate Judge
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